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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re D.J. et al., Persons Coming Under the Juvenile Court Law.	
SAN BERNARDINO COUNTY CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. T.J., Defendant and Appellant.	E062469 (Super.Ct.No. J256446-47) O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Christopher B. Marshall, Judge. Affirmed.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant.

Jean-Rene Basle, County Counsel, and Kristina M. Robb, Deputy County Counsel, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant, T.J. (mother), appeals from the judgments entered under Welfare and Institutions Code section 300.[1] Mother contends insufficient evidence supported the finding that reasonable efforts had been made to prevent or eliminate the reasons for the children's removal from her physical custody. We affirm.

II. FACTS AND PROCEDURAL BACKGROUND

On September 16, 2014, plaintiff and respondent, San Bernardino County Children and Family Services (CFS), filed petitions alleging that L.J. (born in May 2010) and D.J. (born in December 2011) came within the provisions of section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (j) (abuse of sibling). The petition as to D.J. alleged that he had bruises on his thigh that would not ordinarily occur except as a result of neglect or unreasonable acts or omissions. The petition as to L.J. alleged that she had a three-inch patch of hair missing from the back of her head, which would not ordinarily occur except as a result of neglect or unreasonable acts or omissions. Both petitions alleged that mother had substance abuse issues and engaged in domestic violence with her boyfriend, N.O., that J.J. (father) failed to care for and protect the children, and that the children were at risk because of sibling abuse.

The detention report stated that in July 2014, CFS had received a referral stating that the children lived with mother primarily and spent every other weekend with father.

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[1] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

There were no court orders for custody. Mother was reported to use alcohol and methamphetamines. D.J. had told a family member that N.O. hurt him and made him cry and also hit mother and made her cry. D.J. reportedly had a bruise on his leg, which he said N.O. had caused by hitting him with a knife that N.O. had taken off the wall. It was reported that domestic violence had occurred in front of the children, and mother had been observed with injuries in the past. A social worker visited the home in July 2014. Mother denied any domestic violence, denied that N.O. had physically abused the children, and denied the children had ever received marks or bruises from discipline. She stated that the bruise on D.J.'s leg had occurred when he fell off his bunk bed. The social worker saw a knife in a leather case hanging from a lamp in the living room; mother stated it was N.O.'s fishing knife, and he had never used it to discipline the children.

The social worker scheduled another appointment when the children would be home, but mother called to reschedule. On the agreed day, no one was home, and mother told the social worker she had forgotten the appointment. The appointment was rescheduled again. When the social worker arrived, mother said she had forgotten the appointment and would not allow the social worker to enter the house, but she had the children come outside to speak with the social worker.

D.J. told the social worker that when he got in trouble, N.O. spanked him on the leg and forearm and that mother "'whooped'" his butt. The social worker did not see any marks or bruises on D.J. L.J. stated that "dad" (N.O.) whooped her on the butt and spanked her and D.J. with his hand. She said "dad" was mean and did bad things. She

said she felt safe with mother, but not with N.O. She said that mother "'whoop[ed] [N.O.] with her hand,'" and that N.O. hit mother with his hand "'everywhere.'" Mother denied any domestic violence between her and N.O. and said the children had stated he was "bad" because of things they had heard her relatives say about him. N.O. refused to speak with the social worker. In August 2014, a Team Decision Meeting was held with mother, community partners, and social supports, and a safety plan was created under which mother agreed to seek help or stay with a neighbor if the children were at risk of abuse or if she and N.O. fought.

In response to a new referral, the social worker interviewed the paternal grandmother on September 10, 2014. The grandmother stated she had been with the children the previous weekend, and when she parted L.J.'s hair to put it in pigtails, she noticed a three-inch patch of hair missing. L.J. said that "'mommy got mad and pulled it out.'" The grandmother contacted mother, who said that L.J.'s hair had become knotted so mother had to cut it out; however, the hair did not appear to have been cut because the patch was completely bald at the scalp and there were no short pieces. Father had told the grandmother that he believed mother had been high on methamphetamines because she was irritable and was talking fast. In the referral, it was reported that D.J. had said that when N.O. got mad, he made D.J. get in a toy box and N.O. pushed him down.

The social worker, accompanied by police officers, went to mother's house with an interview warrant. L.J. told the social worker that mother had pulled out her hair with a hairbrush. The social worker saw that there was a two- to three-inch circular patch of

hair missing on the back of L.J.'s head. Mother said the hair had come out when she was brushing the child's knotted hair. L.J. told the social worker that N.O. "whoop[ed]" her on the butt with his hand, and that it left circular bruises, but they went away, and she did not currently have any bruises. D.J. also said he got "whoopin[g]s." The social worker did not observe any bruises on him. Mother said she disciplined the children by putting them in a corner or smacking them with her hand, but that the smacking never left marks. N.O. told the social worker he disciplined the children by sending them to their rooms, having them stand in the corner, having them go to sleep early, or spanking them on the bottom with an open hand. He said he had never noticed if he had left marks or bruises.

The next day, a risk assessment meeting was held, and it was decided to have the children assessed by the Children Assessment Center (CAC). On September 12, 2014, the children were taken to the CAC for forensic medical examinations and for a forensic interview of L.J. The examining physician observed two parallel linear bruises on D.J.'s thigh that were consistent with abuse and appeared to have been caused by the child being struck with an unknown object. The physician considered L.J.'s missing hair to have been abuse, whether it had been pulled out by a hairbrush, a hand, or other object. The hair had been broken off, and the lack of new growth indicated the incident had occurred within the last month. The social worker obtained a detention warrant, and on September 13, 2014, the children were placed with father.

The detention report indicated that mother's criminal history included failure to appear on a misdemeanor charge in 2002 and driving without a license in 2001. Father

had convictions in 2011, 2012, and 2013 for being drunk in public. Neither mother nor father had any substantiated CFS history. The detention report stated that reasonable efforts had been made to prevent or eliminate the need for removal of the children, and that preventive services had not been effective in preventing or eliminating the need for removal. Those services were described as "Other Services. [¶] Risk assessment services were provided to the family." The report listed available future services to include "Counseling, Case Management, Parent Training, Transportation, and Other Services."

At the detention hearing, the juvenile court found that CFS had made a prima facie case that the children were at risk and that temporary removal from mother was necessary for their protection. The court ordered supervised visitation between mother and the children for two hours once a week and ordered drug and alcohol testing for mother and father. The court further found that "[r]easonable efforts have been made to prevent or eliminate the need for removal of [the children] from the mother.

On September 17, 2014, mother tested positive for amphetamines. Father's drug and alcohol tests were negative.

CFS prepared a jurisdictional/dispositional report in October 2014. The social worker had spoken to mother about the allegations of the petitions. Mother said D.J. had been jumping on the couch and trying to stand on a glass table when the glass top fell. She said he must have hit his leg on the metal frame of the table. Mother said she had used methamphetamine since she was 14 years old. She stated she had been diagnosed

with non-Hodgkin's lymphoma. She denied that N.O. had hit her, and she did not know why L.J. would have said he had done so. She said L.J.'s hair had come out when she brushed it, and the bald spot was two inches, not three inches. She would never pull out the child's hair or hurt her, and she loved her children. Father and mother were married at the time the children were born and were still married but were separated. Father stated he supported his children. The report stated that father appeared to be on the road to recovery and needed to maintain his sobriety. Father stated he had completed a 30-day rehabilitation program. He was currently employed and was living with his parents, conditioned on his agreement not to drink. The last time he had a drink was 33 days earlier. The report listed "[r]isk assessment" and "Other Services" as the "Reasonable Efforts" CFS had engaged in to prevent or eliminate the children's removal.

The combined jurisdictional/dispositional hearing was held on December 3, 2014. The juvenile court found that both children came within the provisions of section 300, subdivisions (b) and (j). As to L.J., the court found true the allegation under section 300, subdivision (a) that mother had "pulled the child [L.J.]'s hair resulting in an approximate three inch patch of hair missing on the back of the child's head, which would not ordinarily occur except as a result of unreasonable and/or neglectful acts or omissions." The allegation of physical abuse as to D.J. was dismissed, as were the allegations that father failed to care for and protect the children. The juvenile court declared the children dependents of the court, ordered them removed from mother's custody, and ordered that mother receive reunification services. The juvenile court found that "[r]easonable efforts

[have been] made to prevent or eliminate the need for removal of [the children] from their home."

III. DISCUSSION

A. *Standard of Review*

"Before the court may order a child physically removed from his or her parents, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and there are no reasonable means by which the child can be protected without removal. [Citations.] . . . . [¶] The elevated burden of proof for removal from the home at the disposition stage reflects the Legislature's recognition of the rights of parents to the care, custody and management of their children, and further reflects an effort to keep children in their homes where it is safe to do so. [Citations.]" (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145-146.) We thus review the juvenile court's dispositional orders for substantial evidence, "'bearing in mind the heightened burden of proof'" of clear and convincing evidence. (*Id.* at p. 146.) We resolve conflicts in the evidence and make reasonable inferences in favor of the judgment. (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393.)

B. *Forfeiture*

CFS argues that mother forfeited her challenges because she did not raise any objection in the juvenile court.

1. Challenge to the Sufficiency of the Evidence

Ordinarily, a party is precluded from urging on appeal a point not raised in the trial court. (*In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.) "'"The contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule." [Citations.]'" (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561 [challenge to sufficiency of evidence of adoptability not forfeited by failure to object in juvenile court].) Mother's challenge to the sufficiency of the evidence was not forfeited by failure to raise the issue in the juvenile court.

2. Challenge to Failure to State Facts Supporting Findings

Mother further challenges the juvenile court's failure to state the basis for its findings on the record, and citing *In re Ashly F.* (2014) 225 Cal.App.4th 803, 810 (*Ashly F.*), she asserts that findings may not be implied. We find no support in *Ashly F.* for her assertion that findings may not be implied, although the court stated the juvenile court had erred in failing to state the supporting facts on the record. Mother's failure to object in the juvenile court to the failure to state the facts on which it based its findings led to an error that could have been corrected had an objection been timely raised. Mother has forfeited that issue. (See *In re Urayna L.* (1999) 75 Cal.App.4th 883, 886.)

C. *Sufficiency of the Evidence of Reasonable Efforts to Prevent Removal of the Children*

Mother contends insufficient evidence supported the findings of the juvenile court that reasonable efforts had been made to prevent the children's removal from her.

A child may not be taken from the physical custody of the parent with whom he or she resides "unless the juvenile court finds clear and convincing evidence of any of the following circumstances . . . . [¶] (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody. . . . The court shall consider, as a reasonable means to protect the minor, each of the following: [¶] A. The option of removing an offending parent . . . from the home. [¶] B. Allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm. [¶] . . . [¶] (d) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home . . . . The court shall state the facts on which the decision to remove the minor is based." (§ 361, subds. (c), (d); see also *In re Francisco D.* (2014) 230 Cal.App.4th 73, 82-83.)

If the social services agency recommends removal, the social study must include "[a] discussion of the reasonable efforts made to prevent or eliminate removal and a recommended plan for reuniting the child with the family, including a plan for visitation[.]" (Cal. Rules of Court, rule 5.690(a)(1)(B)(i).) Thus, before removing children from the custody of their parents, the social services agency must report what has been done to prevent such removal, and the juvenile court must make an express

finding of fact to support the conclusion that reasonable efforts were made. (§ 361, subd. (c); *Ashly F.*, *supra*, 225 Cal.App.4th at p. 810.)

In *Ashly F.*, the child welfare agency received a report that the mother had beaten one of the children for stealing a wallet. An investigation revealed that the mother had hit the child with an extension cord for stealing. The father stated he had been asleep when the incident happened, and after he saw the injuries, he told the mother never to discipline the children like that again. The agency removed the children from the parents and placed them with an aunt and uncle and filed section 300 petitions. The detention report stated that there were no reasonable means to protect the children's physical or emotional health without removing them from the mother's physical custody. Following the detention hearing, the mother moved out of the family home, began attending parenting classes, and expressed remorse for her conduct. (*Ashly F.*, *supra*, 225 Cal.App.4th at pp. 807-808.) The record did not show that any efforts were made to maintain the children in the home. (*Id.* at pp. 809-810.)

Here, in contrast, the record shows that CFS did attempt to maintain the children in mother's care. Following the first referral, investigations and interviews were conducted in July, and a Team Decision Meeting occurred at which mother, community agencies, and support persons were present, and which resulted in a safety plan. When fresh reports of abuse emerged, CFS conducted further interviews and had the CAC conduct forensic medical examinations, which indicated that the bruises on D.J.'s thigh were consistent with abuse and appeared to be the result of his being struck with some

object and which also indicated that L.J.'s missing hair had been caused by abuse. Thus, unlike in *Ashly F.*, the children were not removed at the first report of abuse, but only after a safety plan had been implemented, new reports of abuse had emerged, and the reports of abuse had been corroborated by forensic medical examination. Also unlike in *Ashly F.*, the children were not removed from the custody of both parents, but were simply moved from one parent to another. Other factors that distinguish *Ashly F.* are mother's admitted history of methamphetamine use and positive drug test on the day of the detention hearing, as well as mother's denial of abuse and domestic violence.

In *In re Hailey T.*, an infant and his three-year-old sister Hailey were removed from their parents' custody after the infant suffered injuries consistent with abuse. (*In re Hailey T.*, *supra*, 212 Cal.App.4th at p. 143.) The parents appealed from the dispositional order as to Hailey on the ground the evidence was insufficient to support a finding that there were no less drastic alternatives to removing her from her parents' home. (*Id.* at p. 147.) The appellate court agreed, noting that no evidence suggested Hailey had ever been abused or that she suffered any harm as a result of the abuse of the infant. The evidence did show that the parents had a good relationship, there was no evidence of domestic violence, neither parent had a history of substance abuse, and the parents had immediately started services. (*Id.* at pp. 147-148.) Here, in contrast, both children had suffered injuries consistent with abuse, the children reported domestic violence between mother and N.O., mother had a history of methamphetamine abuse, and mother continued to deny both the abuse of the children and the domestic violence.

In *In re Henry V.* (2004) 119 Cal.App.4th 522, the court found the evidence insufficient to support a finding that there were no reasonable means of protecting the child other than removal from the home. (*Id.* at p. 530.) The child in that case had suffered abuse in what had apparently been a single occurrence. (*Id.* at p. 529.) Here, as discussed above, the record indicated multiple instances of abuse, in addition to the factors of domestic violence and drug abuse not present in *Henry V.* Further, in *Henry V.*, the court found indications that the social services agency did not understand the necessity of making dispositional findings on the basis of clear and convincing evidence because that standard was never mentioned in the report or at the hearing, and a box on the order form for determining the allegations of the petition by clear and convincing evidence was left unchecked. (*Id.* at p. 530.) Here, in contrast, the report recommended that a finding be made by clear and convincing evidence that reasonable efforts were made to prevent or eliminate the need for removal.

Citing *In re Henry V.*, *supra*, 119 Cal.App.4th at page 527 and *Ashly F.*, *supra*, 225 Cal.App.4th at page 810, mother contends that in-home services, such as counseling, unannounced social worker visits, and public health nursing visits should have been considered before removal. While the courts in those cases listed such services as potentially appropriate, we decline to impose a rule that such services must be explicitly addressed in each case. Instead, we look to whether the efforts made were reasonable. (See Cal. Rules of Court, rule 5.690(a)(1)(B)(i).)

We conclude the evidence was sufficient to support the juvenile court's findings.

IV. DISPOSITION

The orders appealed from are affirmed.

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KING
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.